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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

PROTON ASSOCIATES LLC, and  
SETH MILLER,

## Plaintiffs,

vs.

AVELO, INC.,

Defendant.

Case No.: 2:25-cv-00856-JCM-BNW

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT'S SPECIAL  
MOTION TO DISMISS COUNT IV  
OF THE COMPLAINT PURSUANT  
TO NEVADA'S ANTI-SLAPP  
STATUTE**

## OPPOSITION

2 After Defendant filed a Special Motion to Dismiss Count IV, Plaintiffs filed a  
3 First Amended Complaint that removes the single count targeted by Defendant's  
4 Special Motion. Defendant's Motion accordingly must be denied as moot because the  
5 amended complaint no longer contains the relevant cause of action, and the special  
6 motion thus targets a pleading that is "treated . . . as non-existent." *Ramirez v. Cnty.*  
7 *of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (citation omitted); *Ferdik v.*  
8 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), *as amended* (May 22, 1992) ("[A]fter  
9 amendment the original pleading no longer performs any function."); *see also*, e.g.,  
10 *Zimmerman v. PeaceHealth*, 701 F. Supp. 3d 1099, 1108 (W.D. Wash. 2023) ("The  
11 filing of an amended complaint generally moots a pending motion to dismiss.");  
12 *Wagner v. Choice Home Lending*, 266 F.R.D. 354, 360 (D. Ariz. 2009) ("As both  
13 motions pertain to Plaintiff's original complaint and Plaintiff has since filed an  
14 Amended Complaint, both Motions are now moot."). Because Defendant's special  
15 motion cannot be granted, Defendant is not entitled to any of the affirmative relief  
16 requested in the motion. *See* NRS 41.670(1) (allowing a defendant to recover attorney  
17 fees and costs only "[i]f the court grants a special motion to dismiss filed pursuant to  
18 NRS 41.660" (emphasis added)); *Padda v. Hendrick*, 136 Nev. 856 (2020) (noting that  
19 "the plain language of NRS 41.670(1) requires an anti-SLAPP motion to be granted  
20 before attorney fees and costs may be awarded under the statute" and holding fees  
21 not available where, as here, plaintiff voluntarily dismissed targeted claim).

22        Although Defendant’s Motion must be dismissed as moot because the targeted  
23 claim is no longer operative, Defendant’s special motion to dismiss the claim was  
24 without merit anyway because, among other reasons, Nevada law has not applied the  
25 absolute litigation privilege (which is the only ground Defendant advances in support  
26 of its contention that Plaintiffs could not show a probability of success on the merits  
27 of Count IV of the Complaint) “to interference with *existing contractual relations*.”

1 which is what was alleged in Count IV. *Treasury Sols. Holdings, Inc. v. Upromise, Inc.*, No. 3:10-CV-00031-LRH, 2015 WL 3902400, at \*2 (D. Nev. June 25, 2015) (emphasis added).

4 **CONCLUSION**

5 For the forgoing reasons, Defendant's Special Motion To Dismiss Count IV Of  
 6 The Complaint Pursuant To Nevada's Anti-Slapp Statute, ECF No. 14, must be  
 7 denied as moot.

8  
 9 DATED June 25, 2025.

10 **BRAVO SCHRAGER LLP**

11  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of June, 2025, a true and correct copy **PLAINTIFFS' OPPOSITION TO DEFENDANT'S SPECIAL MOTION TO DISMISS COUNT IV OF THE COMPLAINT PURSUANT TO NEVADA'S ANTI-SLAPP STATUTE** was served via the United States District Court CM/ECF system on all parties or persons requiring notice.

By: /s/ *Dannielle Fresquez*  
Dannielle Fresquez, an Employee of  
BRAVO SCHRAGER LLP